

Message Text

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ACTION EUR-12

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C O N F I D E N T I A L USNATO 01968

E.O. 11652:GDS
TAGS: MARR NATO
SUBJECT: SATCOM III BID DISPUTE BY ITALY AGAINST NICSMA'S
REJECTION OF ITALIAN FIRM'S BID PASSES TO SECRETARY
GENERAL FOR DEFENSE PLANNING COMMITTEE RESOLUTION

REFS: (A) PO/78/19, 23 FEB 78 (CYS SENT 23 FEB TO USDOC,
STATE AND DEFENSE (OASD/ISA MR MILLER)), (B) USNATO 00738,
231638Z JAN 78, (C) AC/4(PP)DS/1132, ITEM I.2(A), MEETING
12 JAN 78, (D) AC/4(PP)DS/1133, ITEM I.2(C), MEETING 19
JAN 78, (E) AC/4(PP)DS/1134, ITEM I.2(B), MEETING 26 JAN
78, (F) AC/4(PP)DS/1135, ITEM I.2(B), MEETING 2 FEB 78,
(G) AC/4-D/2261, ANNEX I, 30 SEP 74, INTERNATIONAL
COMPETITIVE BIDDING PROCEDURES.

SUMMARY. AT REF F MEETING, PAYMENTS AND PROGRESS (P&P)
COMMITTEE (A) NOTED THAT NICSMA COULD NOT AGREE TO ASK
P&P TO SUBMIT THIS DISPUTE TO A PANEL OF INVESTIGATION,
AND THEREFORE (B) ALSO NOTED THAT THIS MATTER IS AUTOMATI-
CALLY PASSED TO THE SECRETARY GENERAL (SYG) FOR DEFENSE
PLANNING COMMITTEE (DPC) DECISION IN ACCORDANCE WITH PARAS
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20 AND 22 OR PARA 24 OF REF G. IN REF A, THE SYG ASKS
DPC TO DECIDE WHETHER TO SUBMIT THE DISPUTE TO A GROUP
OF INDEPENDENT ADVISORS OR DIRECTLY TO BINDING ARBITRATION.
THIS MATTER WILL BE ON EARLY DPC AGENDA, AND WE PROPOSE
TO PRESS FOR BINDING ARBITRATION AS THE MOST EXPEDIENT
SOLUTION. ACTION REQUESTED: CONCURRENCE. END SUMMARY.

1. AS WE ANTICIPATED IN PARA 5, REF B, NICSMA AND THE ITALIANS COULD NOT REACH AGREEMENT TO FORM A PANEL OF INVESTIGATION UNDER PARA 17 OF THE DISPUTE PROCEDURES (REF G), AND IN ACCORDANCE WITH PARAGRAPHS 20 AND 22, THE MATTER WAS PASSED AUTOMATICALLY TO THE SYG FOR RESOLUTION BY THE DPC.

2. SINCE THE DISPUTE STEMS FROM ACTING HOST COUNTRY NICSMA FINDING OF NON-COMPLIANCE OF THE ITALIAN FIRM'S BID ON PURELY TECHNICAL GROUNDS, WITH NO MATTERS OF OTHER POLICY INVOLVED, IT APPEARS THAT THE DPC WILL BE FACED WITH COUNTER-OPPOSING GENERAL STATEMENTS BY NICSMA AND BY THE ITALIAN PERM REP ON BEHALF OF THE ITALIAN BIDDER. THEN THE DPC WILL HAVE THE ALTERNATIVES OF SUBMITTING THE MATTER FOR OBJECTIVE EXAMINATION OF THE FACTS BY EITHER A GROUP OF INDEPENDENT ADVISORS TO PROVIDE AN ADVISORY OPINION, OR A SIMILAR THREE-MAN ARBITRATION BOARD. BINDING ARBITRATION UNDER THE LATTER SOLUTION COULD SAVE TIME BUT IT IS POSSIBLE THE ITALIANS WILL OPT FOR HAVING THE MATTER GO TO NON-BINDING OPINION BY A THREE-MAN GROUP OF INDEPENDENT ADVISORS.

3. THE INFRASTRUCTURE CONTROLLER INFORMED US THAT, IN PROVIDING THE BACKGROUND DATA ON THE DISPUTE SITUATION TO THE SYG, HIS OFFICE HAS ALSO PROPOSED THAT THE MEMBERS OF EITHER THREE-MAN GROUP OF OBJECTIVE EXAMINERS COME
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FROM DENMARK, NORWAY AND PORTUGAL, WHO HAVE TENTATIVELY AGREED, AS THE LEAST INVOLVED NATO COUNTRIES.

4. WE HAVE LEARNED THROUGH CORRIDOR DISCUSSION OF INFORMAL ITALIAN EFFORTS TO INTERCEDE WITH THE SYG THROUGH COMMERCIAL CHANNELS IN ROME AND BY THE ITALIAN FOREIGN OFFICE THROUGH DIPLOMATIC CHANNELS HERE. THEY HAVE ALSO BEEN MAKING EFFORTS WITH DELEGATIONS OF OTHER NATO COUNTRIES HERE ON A POLITICAL LEVEL. HOWEVER, THE SOLE PURPOSE OF ANY ACTION BY THE DPC WILL BE TO DETERMINE AND EXAMINE THE FACTS, AS THERE ARE NO POLITICAL FACTORS INVOLVED.

5. IN THIS CONNECTION, WE ARE ATTENTIVE TO THE INTERESTS OF THE ONLY TWO OTHER BIDDERS (FORD AND HARRIS FROM US) WHOSE BIDS HAVE BEEN FOUND COMPLIANT.

6. ACTION REQUESTED: WASHINGTON CONCURRENCE IN OUR PROPOSAL TO PRESS FOR BINDING ARBITRATION IN DPC DISCUSSION OF THIS DISPUTE. GLITMAN

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